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FILED
San Diego Superior Court

JUL 14 2007

Clerk of The Superior Court

By N. Damon OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, KEARNY MESA BRANCH

THE PEOPLE OF THE STATE OF) Case No.: Y337174
CALIFORNIA,) ENGROSSED SETTLED STATEMENT
Plaintiff/Respondent,) ON APPEAL
vs.) CAZ06475
RAYMOND ROBINSON,)
Defendant/Appellant.)

Appellant's six stated grounds for appeal are as follows:

1. The trial court showed a preconceived bias prejudicial to appellant where attesting to the quality of the government's witness;
2. The government's witness failed to testify to all the elements of the alleged offense;
3. The trial court solicited legal advice from the government's witness, then relied thereupon for its ruling;
4. The trial court required appellant to defend against the wrong law;
5. The trial court erred where directing the government's witness to argue the government's case;

1 6. The trial court abused its discretion where not finding
 2 reasonable doubt of appellant's guilt.

3 **Statement of Evidence / Trial Court Proceedings**

4 This case arises from a traffic citation issued to
 5 appellant by Officer Brian Cornell of the San Diego Police
 6 Department Traffic Division on November 15, 2006 at 2:45 p.m.

7 The location of the alleged violation is a large, city
 8 intersection controlled by traffic signals on all four corners
 9 and identified as Balboa Avenue (hereinafter "Balboa") at
 10 Mercury Street (hereinafter "Mercury").

11 Balboa has five lanes entering said intersection westbound,
 12 two of which are turn lanes, and the other three of which
 13 resume on the far side. Said "three" lanes are hereinafter
 14 identified as #1, #2 and #3, with #1 being the left-most of
 15 the three, traveling westbound.

16 Officer Cornell was proceeding in his police cruiser in the
 17 westbound #2 lane of Balboa, approaching the intersection at
 18 Mercury. Defendant's car was southbound on Mercury, in the
 19 right turn lane, about to make a right turn on a red light
 20 into the westbound #3 lane of Balboa.

21 **Officer's Testimony:**

22 OFFICER CORNELL: "I had a green light... When I got
 23 partially into the intersection, I noticed (defendant's
 24 car)...stopped at the red light... It proceeded to make a right
 25 turn on this red light as I moved through the intersection. I
 26 had been traveling at a safe speed. I was able to put on my
 27 brakes at a moderate force. I actually came to a stop, since I
 28 was trying to move to the right-most lane (which) I'll call

1 the #3 lane. I came to a stop to avoid any type of collision.
 2 The driver also came to a stop and we encountered each other
 3 at stopped positions in the intersection.

4 "My partner's window was down... I heard the driver as
 5 he looked at us (and) yelled, 'You can't change lanes in an
 6 intersection.' ... I directed him to pull over to the curb... (and
 7 I told him)... 'that's not a real accurate statement because
 8 there are no lanes in intersections,' and consequently there
 9 are no lanes able to be changed in intersections. I told him I
 10 was going to write him a ticket... for violation of right of
 11 way..."

12 On cross-examination, Officer Cornell was asked whether
 13 defendant's attempted right turn on red resulted in a crash or
 14 whether any vehicle had been caused to brake hard or to swerve
 15 out of the way, or even honk a horn. The officer's response
 16 was no in each instance.

17 **Defendant's Testimony:**

18 The audiotape reveals some of defendant's decision-making
 19 process when attempting to execute the said turn from
 20 southbound Mercury into the #3 lane of westbound Balboa.

21 MR. ROBINSON: "So I've got the officer here, me
 22 here. This is a turn that I make three times a week... on my way
 23 from work to the place where I work out. That's like 750 times
 24 I've made this turn in the last five years.

25 "So what I've got is a situation where the right
 26 lane (#3 lane of westbound Balboa) clears out, I'm accustomed
 27 to this, and these two lanes (#1 and #2 of westbound Balboa)
 28 still have traffic in them. And so I'm looking at a red light,

1 I'm sitting there, ... the officer's car is just about...entering
 2 the intersection. ... I know he's not going to deviate from his
 3 direction... I've got this free lane open that's very safe, I
 4 use it all the time. I've never had a problem with that.

5 "But, here I go to make my turn, and of course I
 6 always pay attention because there's oncoming cars, so I watch
 7 as I'm making my turn, I make it gradually, very carefully,
 8 but as I do, suddenly, without warning, the patrol car... starts
 9 coming right at me, so I just stopped..."

10 "I was caught off guard. I had no way of knowing the
 11 officer was going to suddenly change lanes like that. ... So
 12 there I was. I had no way to know."

13 **Officer's Redirect:**

14 OFFICER CORNELL: "... this lane (#3 of westbound
 15 Balboa) was available when I began pointing my police car
 16 toward it. It became unavailable when he (defendant) crossed
 17 through the crosswalk and continued his turn. I was hoping he
 18 would pause but he opted not to. I came to a stop. I could
 19 have moved back into the #2 lane but I decided to come to a
 20 stop and meet this driver."

21 **Prior to Oral Argument:**

22 THE COURT: "Educate me. If I'm in the #2 lane on
 23 westbound Balboa crossing Mercury, is it my discretion as a
 24 driver to move into the #3 lane on the other side?"

25 OFFICER CORNELL: "Or even the #1 lane if they're all
 26 available because none of the vehicle codes apply. And you
 27 don't need a signal because you're not changing lanes. Lanes
 28 do not exist in this area"(inside the intersection).

1 THE COURT: "Okay, you've educated me. I think I had
 2 a similar understanding to his (defendant)... that I had to keep
 3 my lane position until I crossed the intersection."

4 ***

5 The court sought and received further clarification of the
 6 lane arrangements of said intersection, utilizing input from
 7 the officer. When defendant sought to add to said
 8 clarification, the following was heard:

9 THE COURT: "Mr. Robinson... we're doing a fact
 10 finding, we're trying to figure out, I'm real familiar with
 11 him, he is probably one of the better traffic officers we
 12 have. He's educated me today."

13 **Trial Court Argument:**

14 THE COURT: "He (the officer) is going to wave
 15 opening and reserve rebuttal."

16 MR. ROBINSON: "So he's going to be able to argue?"

17 THE COURT: "Right. He has first and last but he's
 18 not going to go first. He's going to let you go instead and
 19 he's going to go last." (The court made this arrangement
 20 without any apparent input from the officer.)

21 Defendant began with an argument intended to take away the
 22 alleged right of way of the officer. While traversing the
 23 intersection, the officer had failed to signal any change of
 24 course when moving from the #2 lane to the #3 lane, into which
 25 defendant was attempting to turn. Because defendant was
 26 clearly affected by said change of direction, VC 22107
 27 precluded the officer from ever gaining a right of way to
 28 which to yield.

1 Defendant then argued a case entitled Wakefield v.
 2 Horn, 109 Cal. App. 325, 326/327, where a truck (Mr.
 3 Wakefield) had turned right, onto a highway and was struck
 4 from behind by a car (Mrs. Horn) going the same direction. The
 5 trial court therein found Mrs. Horn at fault, so she appealed
 6 claiming to have had the right of way (under an early version
 7 of VC 21804). The appellate court said no, because there had
 8 been ample space for Mrs. Horn to have slowed, or to have
 9 driven to the left of the Wakefield truck. In the instant case
 10 the officer admitted to having been able to moderately slow
 11 his speed before arriving in the proximity of defendant's car,
 12 and also that he could have stayed in the #2 lane and driven
 13 to the left of defendant's car. Defendant argued that the
 14 Wakefield case was on point and should suffice as a valid
 15 defense, upon which the following was heard:

16 MR. ROBINSON: "So the facts of the case are
 17 identical and I would guess the conclusion would be
 18 identical."

19 THE COURT: "Have you done a comparison of the
 20 statutes from 1930 until now?"

21 Defendant didn't know, so went on to another argument.

22 MR. ROBINSON: "The officer has not been able to
 23 testify to all the elements of the case. There is the
 24 requirement of immediate hazard. The officer did say... nobody
 25 had to screech on their brakes or swerve out of the way, or
 26 there was no accident caused. No one even honked their horn.
 27 So there's been no testimony and no proof shown that there was
 28 ////

1 any immediate hazard. So I think based on that alone he has
2 not fulfilled his obligation to prove the case.

3 "And the last argument I would have is that the
4 officer has chosen the wrong statute. I'm being asked to
5 defend against a statute that's governing the right of way on
6 the open road, whereas the officer's testimony describes a
7 controlled intersection, which is 21802. I don't think I can
8 be asked to defend against a situation where the facts of the
9 case don't jibe with the law."

10 THE COURT: "Alright, your rebuttal."

11 OFFICER CORNELL: "He mentioned right of way. That's
12 my right of way. Unfortunately at that moment it was my right
13 of way. I had a green light, he's got a red one. My right of
14 way. I don't know how more simply I could put it.

15 "He tried to bring up an argument of this case back
16 in the thirties, where a truck pulled out and she had room to
17 go around. This isn't go-carts at the fun center. We don't try
18 to drive around people unless we have to. I had the legal
19 presentation of either of those lanes... He decided to pull out
20 since he thought I was going into a different lane.

21 "He made a comment about an immediate hazard. Well,
22 there was an immediate hazard because I was going that way and
23 I could legally go that way and if I didn't apply my brakes in
24 a moderate fashion I would have... (collided with)... his car..."

25 THE COURT: "Alright."

26 (Neither the officer nor the court ever acknowledged
27 defendant's argument of having been forced to defend against a
28 statute unrelated to the facts of the case.)

1 **Judgment and Sentencing Transcribed:**

2 THE COURT: "The case is before the court now for its
 3 ruling. And this is the judgment of the court. This is
 4 probably not the intersection that is the crowning achievement
 5 of San Diego..."

6 "So the question then becomes, there really doesn't
 7 seem to be any dispute of the facts that I can tell. You're
 8 both narrating the same event. You're not disputing the facts.
 9 You're disputing the application of the facts to the law,
 10 basically.

11 "The officer's got you going five miles an hour, you
 12 say you're going five miles an hour, slow. So, you guys have
 13 each other in the same lanes doing the same thing.

14 "The real question is, what is the application of
 15 the law? The officer has cited the defendant, Mr. Robinson,
 16 under 21804 (a) of the Vehicle Code, which states... (the court
 17 reads the section aloud).

18 "So the first question, first argument Mr. Robinson
 19 makes is that there was no real immediate hazard, that at
 20 least based on the sum of his cases, that the officer could
 21 have slowed, the officer could have chosen another lane. I
 22 don't think these cases are quite on point. I think the
 23 immediate hazard would be the officer himself, as the officer
 24 stated, and the issue was, it affected both cars coming to a
 25 stop, which to me suggests there was a hazard... which kind of
 26 gets us back to the no lane changing or the appearance of a
 27 lane change in an intersection. I have to confess, I was of
 28 the same belief that you really couldn't change position in an

1 intersection, you've got to go straight across before you
2 change lanes. Now, that's not the case.

3 "And so the officer actually had the, going
4 east/west on Balboa, had the option...in seeing clear lanes
5 across, to select the lane they wanted to go into, so there
6 was nobody next to them or on either side. And so the officer
7 selected lane #3 on the westbound and that lane should have
8 been open.

9 "And so after considering the cases and the
10 arguments of both sides, both parties, I'm finding that VC
11 21804 (a) was violated by Mr. Robinson.

12 "So we'll look now to sentencing. Mr. Robinson, you
13 have a perfect driving record. So the question is, do you want
14 to go to traffic school? (The court explains defendant's
15 rights re appeal, and re traffic school, to which defendant
16 agrees.)

17 "So I'm going to impose traffic school. The fine's
18 supposed to be \$180.00. I'm going to impose it but I'm going
19 to stay, um, \$130.00 of it for a year, no same or similar,
20 from the time that it gets imposed if it gets imposed."

21 The foregoing constitutes the complete settled statement on
22 appeal in this case.

23 Dated: 8-6-07

24 Engrossment Certified this date by:

25 

26 The Honorable David M. Rubin

27 Judge of the Superior Court

28 ///// 

A.9
01

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION, APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE OF) Case No.: CA206475
CALIFORNIA,)
) Traffic Court No.: Y337174
Plaintiff/Respondent,)
vs.) Hon. David Rubin, Judge
)
RAYMOND ROBINSON,)
)
Defendant/Appellant.)
)
-----)

APPELLANT'S OPENING BRIEF

Raymond Robinson
4562 Illinois Street
San Diego, CA 92116
Defendant in pro per

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[a]

1 Raymond Robinson
2 4562 Illinois St.
3 San Diego, CA 92116
(619) 283-3121

4 Defendant and Appellant in Pro Per

5 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

6 **CENTRAL DIVISION, APPELLATE DEPARTMENT**

7
8 THE PEOPLE OF THE STATE) Case No.: CA206475
9 OF CALIFORNIA,) (Traffic Court No. Y337174)
10 Plaintiff/Respondent,)
11 vs.) **APPELLANT'S OPENING BRIEF**
12 RAYMOND ROBINSON,)
13 Defendant/Appellant.)
14

15 This appeal is taken from a traffic infraction trial where
16 the appellant had sought acquittal but was found guilty.
17 The traffic court decision is final.

18 **SUMMARY OF THE CASE**

19 Appellant was cited November 15, 2006 at 2:45 p.m. for
20 an infraction violation of Vehicle Code section 21804 (a)
21 for failure to yield the right-of-way to a San Diego Police
22 cruiser driven by Officer Brian Cornell of the Traffic
23 Division.

24 The incident occurred at a large, San Diego
25 intersection known as Balboa Avenue at Mercury Street.
26 Officer Cornell was traveling westbound in the center lane
27 (#2) of Balboa, approaching Mercury, while appellant was
28 //

1 contemplating a right turn on a red light from southbound
2 Mercury into the westbound #3 lane of Balboa.

3 As the officer began moving through the intersection
4 on a green light, appellant simultaneously commenced its
5 right turn against the red light. A problem arose because
6 both drivers anticipated exiting the intersection via the
7 #3 lane of westbound Balboa, and consequently the two
8 vehicles came to a stop where encountering one another in
9 the intersection. No accident occurred but appellant
10 criticized Officer Cornell for changing lanes in the
11 intersection and was thereupon cited after being advised
12 that lanes do not exist within intersections.

13 At trial, following the conclusion of testimony, the
14 court, Hon. David Rubin presiding, admitted to having been
15 of the same belief as appellant, that a motorist must
16 maintain lane position while traversing an intersection.
17 However, Officer Cornell convinced the court otherwise, and
18 appellant was later found guilty based partially thereupon.

19 Prior to the commencement of oral argument, the court
20 sought Officer Cornell's input for further clarification of
21 the physical layout of said intersection. But, when
22 appellant attempted to add thereto, the court made clear
23 its preference to acquire such information solely from
24 Officer Cornell.

25 As legal argument began, the court specified that
26 Officer Cornell would be waving opening argument but would
27 reserve rebuttal. Appellant brought four distinct
28 arguments, three of which were rebutted by Officer Cornell.

Satisfied that there was no dispute of the facts, the lower court decided that appellant's car should not have been in the way of Officer Cornell's cruiser and therefore VC 21804 (a) had been violated by appellant.

MATTERS OF CONTENTION

7 1) Whether the trial court believed intent existed;

8 2) Whether all elements of the offense were proven;

9 3) Whether the trial court exceeded its jurisdiction;

10 4) Whether the trial court was impartial; and,

11 5) Whether appellant was charged with the right offense.

ARGUMENT

1

THE TRIAL COURT ABUSED ITS DISCRETION

WHERE FAILING TO ACKNOWLEDGE THAT IT HAD
AFFIRMATIVELY FOUND NO CRIMINAL INTENT

17 The *California Penal Code* requires that, with few
18 exceptions, the provisions of law relating to misdemeanors
19 also apply to infractions, including burden of proof [Id.
20 at section 19.7].

21 Section 20 of said code makes clear that a crime or
22 public offense has not occurred without there being intent,
23 except in cases of criminal negligence.

24 Looking to page 2 of the *ENGROSSED SETTLED STATEMENT ON*
25 *APPEAL* (hereinafter “ESS”), Officer Cornell entered the
26 intersection in the westbound #2 lane while appellant
27 contemplated its right turn into the westbound #3 lane [Id.
28 at lines 16-20]. As the officer began traversing the

1 intersection, appellant began its turn [Id. at lines 24-25]
 2 while believing the officer would maintain his #2 lane
 3 position throughout the intersection [ESS p.4, lines 1-
 4 3,10-12].

5 Following testimony, upon learning from Officer Cornell
 6 that changing one's lane position while within an
 7 intersection is proper, the court said, **"I think I had a**
8 similar understanding to his (defendant)...that I had to keep
9 my lane position until I crossed the intersection" [ESS p.4
 10 lines 22-28; p.5 lines 1-3]. 1/

11 **a.)** During trial court argument, Officer Cornell made
 12 clear his own belief that appellant had had no
 13 criminal intent, where arguing, **"He decided to pull**
14 out since he thought I was going into a different
15 lane" [ESS p.7, lines 19-20].

16 **b.)** While rendering judgment, the court reiterated its
 17 belief of appellant's belief, where disclosing, **"I**
18 have to confess, I was of the same belief that you
19 really couldn't change position in an intersection,
20 you've got to go straight across before you change
21 lanes. Now, that's not the case" [ESS at 8-9, lines
 22 27-28, 1-2].

23 Thus, the argument here is that if the #3 lane had remained
 24 fully available to appellant, as expected, no right-of-way
 25 issue might exist. It is clear the court believed appellant
 26 expected said lane to remain available, because the court
 27 -----

28 1/ All quotations herein are emboldened merely to further distinguish them.

1 itself admitted it also would have expected the officer to
 2 maintain his #2 lane position throughout the intersection.
 3 Hence, the court affirmatively believed appellant had had
 4 no intent to create a right-of-way issue.

5 c.) Knowing there was no intent, the trial court abused
 6 its discretion where choosing to find appellant
 7 guilty in spite of *Penal Code* section 20.

8 Where it might be argued that appellant did not raise the
 9 issue of *no intent* at trial, it should be noted that this
 10 proposition's merit did not come to full fruition until
 11 pronouncement of judgment. Also, "**if the new theory
 12 presents only a question of law arising from facts which
 13 are undisputed, (the appellate court) may consider the
 14 issue**" [People v. Butler (1980) 105 Cal.App.3d 585, 588].

15 The trial court had indeed found no factual dispute [ESS at
 16 8, line 8].

17 Where it might be argued that a judge's comments made
 18 during trial are not reviewable, "**(i)n criminal cases an
 19 appellate court may take into consideration the judge's
 20 statements as a whole when they disclose an incorrect
 21 rather than a correct concept of the relevant law, embodied
 22 not merely in secondary remarks but in his basic ruling"**
 23 [People v. Butcher (1986) 185 Cal.App.3d 929, 936].

24 **II**

25 THE COURT'S ERRONEOUS FINDING OF THE ELEMENT
 26 OF IMMEDIATE HAZARD LEAVES THE ALLEGED
 27 VIOLATION REMAINING UNPROVEN

28 There are two scenarios here:

1 First of all, there seems a need to determine, based
2 upon the officer's testimony, whether an *immediate hazard*
3 was shown. [ESS p. 2, lines 22-28; p. 3, lines 1-11; p.4,
4 lines 14-20]. In particular, the officer's proof included,
5 **"I could have moved back into the #2 lane but I decided to**
6 **come to a stop and meet this driver"** [ESS p.4, lines 18-
7 20]. Does that sound like an immediate hazard existed?

8 Secondly, the California statutes relating to failure to
9 yield the right-of-way all seem to have the *immediate*
10 hazard element in common [Vehicle Code sections 21804 (a),
11 21453 (b), etc.], and the trial court said in its judgment,
12 **"I think the immediate hazard would be the officer himself,**
13 **as the officer stated, and the issue was, it affected both**
14 **cars coming to a stop, which to me suggests there was a**
15 **hazard..."** [ESS at 8, lines 22-25].

- 16 a.) One of the problems with the lower court's
17 judgment is that it does not account for the
18 point in time when appellant had had to make its
19 decision, prior to commencing its turn, as to
20 whether an immediate hazard existed.
- 21 b.) The court found "**a hazard**" where the
22 two vehicles encountered one another at stopped
23 positions in the intersection [Id.], but
24 appellant had had to make its decision while
25 still in the cross street, when the officer's
26 cruiser was just entering the far side of the
27 intersection in a totally different lane [ESS at
28 2, lines 16-20, at 4, lines 1-5].

1.) If such a hazard ever did come to exist, it
2. was impossible for appellant to have
3. anticipated it prior to the officer's change
4. of direction becoming apparent, which
5. occurred after appellant had committed to
6. its turn [ESS at 2, lines 24-25, at 4, lines
7. 5-9].
8.) Further complicating appellant's ability to
9. anticipate any hazard upon commencing its
10. turn, was the officer's failure to signal
11. any intent to change course. Appellant
12. testified, "**...without warning, the patrol
car...starts coming right at me..."** and "**I had
no way of knowing the officer was going to
change lanes like that**" [ESS at 4, lines 8-
13. 12].
14.) Officer Cornell defended his failure to use
15. his turn signal, where advising the court,
16. "**And you don't need a signal because you're
not changing lanes. Lanes do not exist in
this area (inside the intersection)**" [ESS at
17. 4, lines 26-28].
18.) **Vehicle Code section 22107**, as argued by
19. appellant at trial [ESS at 5, lines 21-28]
20. requires a proper signal anytime a change of
21. direction affects another person. The trial
22. court chose to be persuaded by Officer
23. Cornell's unsubstantiated claim of having no
24. 25. 26. 27. 28.

duty to signal, rather than pay heed to said statute.

5.) Hence, not only should Officer Cornell have signaled a warning to appellant, the trial court should have made its determination regarding *immediate hazard* at the point in time when appellant began its turn; not later, after the officer's intent to change course became known.

6.) The trial court's finding of an immediate hazard is erroneous. The judgment is therefore equally erroneous because the evidence does not support it.

III

THE TRIAL COURT EXCEEDED ITS JURISDICTION

AND THEREBY CREATED A VOID JUDGMENT

17 While there appears to be a shortage of precedent cases
18 deciding the effect of a court directing a non-lawyer
19 witness to argue the People's side of a criminal matter,
20 such an egregious anomaly occurred in this case and
21 resulted in a jurisdictional excess sufficient to render
22 the judgment a nullity.

23 a.) When the court announced that Officer Cornell would
24 be waving opening argument but would reserve
25 rebuttal, appellant asked, "**So he's going to be**
26 **able to argue?**" [ESS p.5, lines 14-16]. The court
27 responded, "**Right. He has first and last but he's**
28 **not going to go first. He's going to let you go**

1 **instead and he's going to go last" [Id. lines 17-**
2 **19].**

3 b.) When appellant's oral argument was complete, the
4 trial court said to Officer Cornell, "**Alright, your**
5 **rebuttal**" [ESS p.7, line 10].

6 c.) According to the verbatim transcription of the
7 audio tape, Officer Cornell began his rebuttal by
8 attempting to counter appellant's attack upon the
9 officer's right-of-way; then Officer Cornell
10 brought argument intended to denounce case law
11 presented by appellant; and lastly Officer Cornell
12 argued for the existence of an immediate hazard,
13 again in response to appellant's defense thereabout
14 [Id. lines 11-24].

15 d.) When Officer Cornell had completed the People's
16 argument, the court again said "**Alright**" before
17 pronouncing its decision [Id. line 25].

18 e.) Such substantive argument by Officer Cornell was
19 intended to help persuade the court in favor of the
20 People, to appellant's prejudice, but without
21 authority.

22 f.) This deviation in procedure is not found in the
23 rules. The trial court had no right to hear such
24 argument, much less direct that it happen. The
25 judgment of the lower court is therefore subject to
26 attack and should properly be disposed of in a
27 manner other than affirmance.

28 ////

IV

THE JUDGMENT CANNOT STAND BECAUSE
THE TRIAL COURT WAS NOT IMPARTIAL

4 Officer Cornell was clearly in a position to have a special
5 influence upon the trial court:

6 a.) First, the court sought to be advised on the
7 relevant law by Officer Cornell, a biased, non-
8 lawyer, government witness [ESS p.4, lines 22-24]:
9
10 1) Having received such legal advice, the
11 court promptly stated, "**Okay, you've**
12 **educated me,**" even though the officer's
13 advice was contrary to what the court
14 had believed when the hearing began
15 [ESS p.4 lines 25-28, p.5 lines 1-3];
16 2) The court later relied upon that very
17 same legal advice in order to convict
18 appellant [ESS p.8, lines 27-28; p.9,
19 lines 1-11].
20 b.) Secondly, where the court sought Officer Cornell's
21 input for further clarification of the physical
22 layout of the intersection and appellant attempted
23 to add thereto, the court made clear its desire to
24 acquire such information only from Officer Cornell:
25 "**Mr. Robinson... we're doing a fact finding, we're**
26 **trying to figure out, I'm real familiar with him,**
27 **he is probably one of the better traffic officers**
28 **we have. He's educated me today**" [ESS p.5, lines 5-
12];

1 c.) Third, the trial court was in fact so influenced by
 2 Officer Cornell that it later directed said officer
 3 to argue the People's case [ESS p.7, lines 10-24];
 4 d.) Fourth, the trial court remained so persuaded by
 5 Officer Cornell's naked argument of having no duty
 6 to signal a change of direction within the
 7 intersection, that it ignored contravening law in
 8 Vehicle Code section 22107 as argued by appellant
 9 at trial [ESS p.4, lines 22-28; p.5, lines 21-28];
 10 e.) Finally, the court stood behind Officer Cornell's
 11 incorrect choice of traffic statutes and found
 12 appellant guilty thereof [ESS p.9, lines 10-11]
 13 even though said statute does not even apply to the
 14 facts of the case [see argument V herein below].
 15 f.) This trial court apparently intended for Officer
 16 Cornell to win the case no matter what. "**The entire**
 17 **conduct of the trial from beginning to end is**
 18 **obviously affected by...the presence on the bench of**
 19 **a judge who is not impartial**" [Arizona v.
 20 Fulminante (1990) 499 U.S. 279, 309-10].
 21 g.) Thus, it appears appellant has not been afforded
 22 due process, and a reversal seems appropriate.

23 NOTE: If, where considering the argument immediately above,
 24 this Court requires that the bias originate from an extra-
 25 judicial source, judicial notice might be taken of the fact
 26 that the trial court judge was newly elected to office
 27 within less than nine months of this trial, having been
 28 supported politically by all of the Police Officers

1 Associations in the County, and that said judge may have
2 felt beholden to such officers [see attachment hereto].

v

APPELLANT CANNOT BE FOUND IN VIOLATION OF
A STATUTE THAT IS NOT RELEVANT TO
THE CIRCUMSTANCES OF THE CASE

7 The record shows that the location of the incident was a
8 large, city intersection where appellant, facing a red
9 light, commenced a right turn and was cited for failure to
10 yield the right-of-way to the police cruiser [ESS p.2,
11 lines 7-8, 18-20; p.3, lines 9-11].

12 Vehicle Code section 21453 (b) seems to apply to the
13 circumstances:

14 "...a driver, after stopping..., facing a steady
15 circular red signal, may turn right... (but) ...shall
16 yield the right-of-way... to any vehicle that... is
17 approaching so closely as to constitute an
18 immediate hazard to the driver..." [Id.].

19 Appellant, however, was forced to defend against Vehicle
20 Code section 21804 (a):

21 "The driver of any vehicle about to enter or
22 cross a highway from any public or private
23 property, or from an alley, shall yield the
24 right-of-way to all traffic...approaching on the
25 highway close enough to constitute an immediate
26 hazard..." [Id.].

27 The trial court read Vehicle Code section 21804 (a) into
28 its judgment and then found appellant in violation thereof

1 [ESS p.8, lines 16-17; p.9, lines 10-11] even though said
 2 statute is not relevant to the facts of the case. **"The**
 3 **provisions of section 21804 obviously do not contemplate**
 4 **the regulation of traffic over a highway crossing subject**
 5 **to control by a signalling device..."** [Malone v. Perryman
 6 (1964) 226 Cal.App.2d 227, 235].

7 It would seem reasonable to presume that had the
 8 Legislature intended for the State's right-of-way statutes
 9 to be used interchangeably, it might have written just one
 10 such statute.

11 Furthermore, being made to defend against the wrong
 12 statute results in absolute frustration, and **"(t)he law**
 13 **never requires (such) impossibilities"** [Civil Code section
 14 3531].

15 Clearly there exists reasonable doubt that appellant
 16 violated Vehicle Code section 21804 (a), and the trial
 17 court therefore committed reversible error where finding
 18 appellant guilty thereof.

19 **WHEREFORE**, appellant Raymond Robinson, for the reasons
 20 set forth herein above, requests a reversal of the lower
 21 court's judgment, with directions to dismiss the case
 22 because there appears no possibility of it being prosecuted
 23 successfully.

24
 25 Dated: 2/11/07 Ray Robinson
 26 Raymond Robinson
 27 Appellant in pro per
 28 ////

EXHIBIT C

F I L E D
Clerk of the Superior Court

SEP 28 2007

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, APPELLATE DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Appellate Division No. CA206475
Superior Court No. Y337174

Plaintiff/Respondent,

v.

RAYMOND ROBINSON,

Defendant/Appellant.

RESPONDENT'S BRIEF

Appeal from the Judgment of the Superior Court
San Diego Judicial District
The Honorable David M. Rubin, Judge of the Superior Court

MICHAEL J. AGUIRRE, City Attorney
CHRISTOPHER S. MORRIS, Assistant City Attorney
JONATHAN I. LAPIN, Deputy City Attorney
California State Bar No. 194552

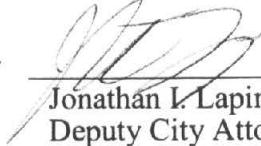
Office of the City Attorney
Appellate Unit
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone: (619) 533-5500

Attorneys for Plaintiff/Respondent

1 The People have reviewed Appellant's brief and submit without objection on the merits of
2 the appeal.

3 Dated: September 27, 2007

4 MICHAEL J. AGUIRRE, City Attorney

5
6 By 
7 Jonathan I. Lapin
Deputy City Attorney

8 Attorneys for Plaintiff/Respondent

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MICHAEL J. AGUIRRE, City Attorney
CHRISTOPHER S. MORRIS, Assistant City Attorney
JONATHAN LAPIN, Deputy City Attorney

Office of the City Attorney
Criminal Division
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone (619) 533-5500

Date: January 18, 2008
Time: 10:00 a.m.
Dept: Presiding
Judge: The Honorable Peter C. Deddeh

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DECLARATION OF
SERVICE BY MAIL

Case No. CA206475
People v. Raymond Robinson

I, Cheryl Willis, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103. I served the following document(s): **RESPONDENT'S BRIEF**, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Raymond Robinson
4562 Illinois Street
San Diego, CA 92116

The Honorable David M. Rubin
Judge of the Superior Court
220 West Broadway
San Diego, CA 92101

I then sealed each envelope and with the postage thereon fully prepaid, deposited each in the United States mail at San Diego, California on Sept 28, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
Sept 28, 2007, at San Diego, California.


Cheryl Willis

PROOF OF SERVICE BY MAIL
C.C.P. §§ 1013(a); 2015.5

EXHIBIT D

FILED
Clerk of the Superior Court

JAN 18 2008

By: Anthony Shirley, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

APPELLATE DIVISION

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

) Appellate Division No.: CA 206475

) Trial Court Case No.: Y337174
) (Central Division, Kearny Mesa Branch)

13 Plaintiff(s) and Respondent(s),

14 v.

O R D E R

15 RAYMOND ROBINSON,

16 Defendant(s) and Appellant(s).

)

)

17
18 The judgment of the trial court is reversed and the case is dismissed in the interests of
19 justice. (*People v. Kriss* (1979) 96 Cal.App.3d 913.)

20 JAN 18 2008

21 Dated: _____

Stephanie Sontag P.J.
22 STEPHANIE SONTAG
Esteban Hernandez J.
23 ESTEBAN HERNANDEZ
William S. Dato J.
24 WILLIAM S. DATO
25
26
27
28 APP 01-18-08 P17

D.1

EXHIBIT E

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO APPELLATE DIVISION COUNTY COURTHOUSE - 220 WEST BROADWAY - SAN DIEGO, CA		<i>FOR COURT USE ONLY</i>
PEOPLE		<i>RECEIVED San Diego Superior Court FEB 05 2008 Clerk of the Superior Court by [initials]</i>
	Respondent vs. RAYMOND ROBINSON	
	Appellant	From SAN DIEGO Court
REMITTITUR (CRC Rule 8.773, 8.793)		AD CA206475
		LJ Y337174

I, certify the attached is a true and correct copy of the original order or opinion entered in the above-entitled case on January 18, 2008 and the order or opinion has now become final.

Witness my hand and seal of the Court



Date: February 5, 2008

CLERK OF THE SUPERIOR COURT

by  Deputy
N. Damron

CLERK'S CERTIFICATE

The foregoing is a full, true and correct copy of the original on file in this office.



Date: February 5, 2008

CLERK OF THE SUPERIOR COURT

by _____, Deputy

EXHIBIT F

Case 3:08-cv-00244-DMS-BLM Document 18 Filed 05/05/2008 Page 1 of 7

NUNC PRO TUNC**MAY - 1 2008****FILED****2008 MAY -5 AM 11:14**SIXTH U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY FNP DEPUTY

1 Raymond Robinson
 2 4562 Illinois St.
 3 San Diego, CA 92116
 4 (619) 283-3121
 5 xray.1@cox.net
 6 in pro per

8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 RAYMOND ROBINSON, Case No.: '08 CV 0244 DMS (BLM)
 12 Plaintiff,
 13 vs.
 14 DAVID RUBIN and BRIAN CORNELL, **FIRST AMENDED COMPLAINT FOR**
 15 Defendants. **DAMAGES**
 16
 17 Jury Trial Requested.

PRELIMINARY REMARKS

18 1. In 1967, Supreme Court Justice William O. Douglas posed the following inquiry:
 19 “... *What about the judge who conspires with local law enforcement officers to*
 20 *‘railroad’ a dissenter? What about the judge who knowingly turns a trial into a*
 21 *‘kangaroo’ court? Or one who knowingly flouts the Constitution in order to obtain*
 22 *a conviction? ...*” [Pierson v. Ray, 386 U.S. 547, 566-67 (1967)].
 23 2. Those very issues raised by Justice Douglas over 40 years ago are now surfacing
 24 by way of this lawsuit, exposing two such actors while serving as an example to

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1 others who might be intentionally abusing the protected rights of self-represented
2 litigants.

3 JURISDICTION AND VENUE

4 3. This case arises under the Constitution and laws of the United States and
5 presents a federal civil rights question within this court's jurisdiction under
6 28 U.S.C. section 1331.

7 4. The court has authority to grant nominal, actual and exemplary damages pursuant
8 to 42 U.S.C. section 1983.

9 5. This venue is proper under 28 U.S.C. section 1391, in that both defendants reside
10 within this district.

11 PARTIES

12 6. Plaintiff Raymond Robinson is a United States citizen residing in San Diego, CA.

13 7. Defendant David Rubin is a United States citizen and California state judge
14 residing in San Diego, California. This action is brought against Mr. Rubin in his
15 individual capacity.

16 8. Defendant Brian Cornell is a United States citizen and a City of San Diego traffic
17 patrolman residing in San Diego, California. This action is brought against Mr.
18 Cornell in his individual capacity.

19 STATEMENT OF FACTS

20 9. On November 15, 2006, Defendant Cornell issued a traffic citation to Plaintiff,
21 thereby accusing Plaintiff of an infraction violation of California law.

22 10. On February 9, 2007 the State of California conducted a court trial of said
23 accusation.

24 11. During said trial, Plaintiff was self-represented, Defendant Cornell was the sole
25 government witness, and Defendant Rubin was the judge.

12. During said trial, when the legal argument of the defendant therein was to begin,
2 Judge Rubin declared that the government's witness, a layperson, would "wave
3 *opening and reserve rebuttal*," upon which the defendant asked Judge Rubin if the
4 witness was therefore going to be allowed to argue, to which Judge Rubin
5 declared, "*Right. He has first and last but he's not going to go first. He's going to*
6 *let you go instead and he's going to go last.*"

7 13. Judge Rubin's assignment of the government's witness to argue the law on
8 behalf of the People, as described in paragraph 12 above, was made without
9 overt consultation with said witness and without objection therefrom.

10 14. Judge Rubin's said assignment of the government's witness to argue the law on
11 behalf of the People, was a ministerial act requiring no discretion.

12 15. During said trial, at the completion of the defendant's four, specific legal
13 arguments, Judge Rubin said to the government's witness, "*Alright, your rebuttal,*"
14 at which point Mr. Cornell, still without objecting, proceeded to furnish the
15 People's legal argument in opposition to each of the first three of Plaintiff's
16 particular defensive arguments, ignoring the fourth.

17 16. During said trial, at the conclusion of Mr. Cornell's legal arguments, Judge Rubin
18 pronounced Plaintiff herein guilty while acknowledging upon the record that the
19 arguments of the government's witness had indeed influenced the court's verdict.

20 CAUSE OF ACTION

21 17. Plaintiff incorporates by reference the allegations of paragraphs 3 through 16
22 above.

23 18. Defendants conspired to violate Plaintiff's *procedural* due process rights where
24 having a layperson argue the law on behalf of the State and having the judge rely

upon said argument for the court's guilty verdict, thus rendering the underlying proceedings fundamentally unfair.

19. Defendants conspired to violate Plaintiff's *substantive* due process rights where, at the urging of the judge, the government's witness got up and started arguing the law on behalf of the People of the State of California, thereby shocking the conscience of a reasonable person.

20. Defendants are in violation of 42 U.S.C. section 1983, in that they acted under color of state law to deprive Plaintiff of due process rights protected under, and guaranteed by, Section 1 of the Fourteenth Amendment to the Federal Constitution.

21. Defendants are in violation of California Civil Code sections 1708, 1709 and 1710 for their deceitful infringement upon Plaintiff's rights as aforesaid.

REQUEST FOR RELIEF

Good cause having been shown, Plaintiff requests the following:

22. That both Defendants be found guilty of violating Plaintiff's federally protected constitutional rights;
23. That both Defendants be found guilty of violating Plaintiff's California civil rights;
24. That the Court recognize Defendant Cornell's violation of California Business and Professions Code section 6126 (a) for arguing the law on behalf of the People of the State of California without being a member of the State Bar, a misdemeanor;
25. That the Court recognize both Defendants' violation of California Penal Code section 182 (a)(1) for their conspiracy to have Defendant Cornell represent the People as aforesaid;
26. That the Court recognize both Defendants' violation of California Penal Code section 182 (a)(5) for conspiring to pervert or obstruct justice, or the due

1 administration of the laws, where Defendant Rubin precipitated Defendant
2 Cornell's representation of the People and then relied thereupon where finding
3 Plaintiff herein guilty;

4 27. That the Court find the aforesaid conduct of Defendant Rubin as non-judicial,
5 because said Defendant knew he had no jurisdiction whatsoever to assign a
6 layperson to argue the law on behalf of the People, and also because said
7 Defendant had no jurisdiction whatsoever to knowingly participate in a violation of
8 state penal code(s);

9 28. That Plaintiff be awarded \$1.00 in nominal damages;

10 29. That Plaintiff be awarded \$10,000.00 in actual damages;

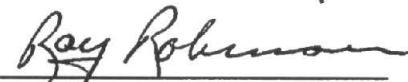
11 30. That the Defendants be minimally punished through punitive damages equal to
12 one year's 2007 gross salary from each of said Defendants, respectively, to serve
13 also as an example so that other such actors might be discouraged from trampling
14 upon the rights of future unsuspecting litigants;

15 30. That Plaintiff be awarded any other or further relief as the Court or Jury may
16 deem appropriate.

17 VERIFICATION

18 I, Raymond Robinson, am the Plaintiff in this action. I personally set forth the
19 allegations of fact in this Complaint, and I hereby declare under penalty of perjury that
20 each of said allegations is true and correct.

21 Dated: 5-1-08



22 Raymond Robinson

23 Plaintiff, in pro per

24 ////